PA 14-233—sHB 5586
Judiciary Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES CONCERNING THE CRIMINAL JUSTICE SYSTEM

SUMMARY: This act makes a number of unrelated changes in criminal justice statutes. Regarding warrants, it:

1. creates a procedure for judges to issue warrants to install tracking devices (such as a GPS) on people or objects as part of a criminal investigation and
2. authorizes judges to issue warrants for records or data of out-of-state corporations or business entities that do business in Connecticut (including entities that provide email or remote computing services to the public).

Among other things, the act:

1. alters the forfeiture procedures for property connected to criminal offenses other than certain drug crimes, allowing (a) forfeiture of proceeds of these crimes and (b) local police departments to receive a portion of any money they seize from October 1, 2014 to June 30, 2016;
2. expands forfeiture provisions for sexual exploitation, human trafficking, and child pornography crimes to cover more property;
3. gives probation officers serving violation of probation warrants the same responsibilities as police officers when arresting someone under a warrant, including allowing them to release someone arrested on a violation of probation warrant;
4. makes a minor change to the crime of 1st degree harassment;
5. increases the penalty for fraudulent use of an ATM;
6. doubles the monetary thresholds for the different penalties that apply to issuing bad checks based on the value of the checks issued, thereby reducing the penalty in some cases;
7. allows a non-veteran to participate in accelerated rehabilitation (AR) a second time under certain circumstances;
8. prohibits a state, municipal, or quasi-public official or employee from participating in AR if charged with 1st degree larceny involving defrauding a public community of more than $2,000;
9. requires the court to seal a person's file when he or she applies for participation in AR or alcohol or drug dependency treatment program; and
10. allows the Eyewitness Identification Task Force to continue until June 30, 2016 for certain purposes.

EFFECTIVE DATE: October 1, 2014, except for the task force provision, which is effective upon passage.

§ 1 — FORFEITURE OF PROPERTY RELATED TO CRIMES

The act makes a number of changes to the law authorizing forfeiture of property connected to a crime other than most drug crimes. The act's changes make these forfeiture provisions similar to those that apply to property related to drug or trafficking in person crimes.

Property Subject to Forfeiture

The law subjects to forfeiture property possessed, controlled, designed, intended for use, or which is, has been, or may be used, to commit a crime. The act also subjects proceeds of a crime to forfeiture.

Notice

Prior law required the judge issuing the warrant or the arraignment court to notify the property owner and anyone with a recorded mortgage, assignment of lease or rent, lien, or security interest in the property through a summons within 10 days of the seizure. The act instead:

1. allows a prosecutor to petition the court, within 90 days after seizure, for a civil proceeding to forfeit the property;
2. requires the court to identify owners and any others who appear to have an interest in the property; and
3. requires the state to notify owners and interested parties.

Prior law allowed a police officer to serve the notice by leaving it with the person, at his or her usual place of abode, or at the place where the property was seized if the person's address was unknown. The act instead requires the state to provide notice by certified or registered mail.

The act eliminates requirements that the notice describe the property with reasonable certainty; state when, where, and why it was seized; and state the date and place of the hearing.

Hearing

Prior law required the court to hold a hearing between six and 12 days after serving the notice. The act instead requires the hearing to be held at least two weeks after the notice.

It eliminates a provision making parties of those with an interest who appear at the court hearing. The act makes the action an in rem action (an action against property) that is a civil action. As under prior law, the state must prove the material facts by clear and convincing evidence.

Disposition of Property

As under prior law, the court may determine the property is a nuisance and order it destroyed or disposed of to a charitable or educational institution or a government agency or institution. Property may also be sold at public auction. It cannot be destroyed or disposed of in violation of a mortgage, assignment, lien, or security interest.

Previously, all seized money was deposited in the General Fund subject to a bona fide mortgage, assignment of lease or rent, lien, or security interest. The act instead distributes this money according to the following formula for a 21-month period from October 1, 2014 to June 30, 2016:

1. 70% to the law enforcement agency that investigated the crime and seized the funds, with local police departments using any money received for law enforcement activities and the Department of Emergency Services and Public Protection depositing any money received in the General Fund;
2. 20% to the Criminal Injuries Compensation Fund (which provides compensation and restitution to crime victims); and
3. 10% to the Division of Criminal Justice, for deposit in the General Fund.

Beginning July 1, 2016, the act again requires depositing all seized money directly in the General Fund.

Previously, a seized valuable prize became the state's property subject to a mortgage, assignment, lien, or security interest. The act no longer requires it to become state property and thus allows it to be disposed of to other entities. Prior law also allowed a public auction of the prize and depositing proceeds in the General Fund, while preserving the rights of those with property interests in the prize. The act instead allows its sale according to procedures approved by the administrative services commissioner. The act requires (1) using sale proceeds to pay any mortgage, assignment of lease or rent, lien, or security interest and (2) distributing any remaining amount in the manner described above for seized money.

The act makes secondary evidence (evidence about the property rather than the property itself) of property condemned and destroyed under these provisions admissible against the defendant in a prosecution, to the same extent the evidence would have been admissible if the property was not destroyed.

§ 2 — FORFEITURE OF PROPERTY RELATED TO SEXUAL EXPLOITATION, HUMAN TRAFFICKING, AND CHILD PORNOGRAPHY

The act expands the types of property related to sexual exploitation, human trafficking, and child pornography crimes that can be seized and forfeited.

Prior law authorized forfeiture of property (1) derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from these criminal violations and (2) used or intended for use, in any manner or part, to commit or facilitate the violation of those laws for pecuniary (monetary) gain. The act no longer requires these actions to be connected to pecuniary gain.

By law, other funds and property are subject to forfeiture if they are (1) money used or intended for use in certain crimes or (2) property constituting the proceeds obtained, directly or indirectly, from these crimes.

By law, these forfeiture procedures relate to property connected with the crimes of:

1. risk of injury to a minor involving sale of a child under age 16;
2. prostitution and 1st, 2nd, and 3rd degree promoting prostitution;
3. using an interactive computer to entice a minor;
4. voyeurism, disseminating voyeuristic material, and employing or

promoting a minor in an obscene performance;
5. human trafficking;
6. importing child pornography, and
7. commercial sexual exploitation of a minor.

§ 3 — PROBATION

The act gives a probation officer serving a violation of probation warrant the same responsibilities the law gives a police officer serving most warrants, including violation of probation warrants. Under the act, the probation officer must:

1. advise the subject of the warrant that (a) he or she has the right to counsel and to refuse to make statements and (b) his or her statements may be used as evidence against him or her;
2. interview the subject to obtain information relevant to the terms and conditions of the subject's release, unless the person waives or refuses the interview, and independently verify information when necessary;
3. release the person on a written promise to appear or on posting a bond with conditions set by the officer (conditions may not modify those set by the court), except for those charged with a family violence crime;
4. check the National Crime Information Center criminal information database before setting conditions of release; and
5. immediately notify a bail commissioner or intake, assessment, and referral specialist if the person does not post bail.

§ 4 — 1ST DEGREE HARASSMENT

Under the act, someone who commits 1st degree harassment is deemed to have committed the crime where the harassing communication (1) originated or (2) was received. Previously, the law only deemed the crime to have been committed in both places when the conduct involved telephone calls, although someone can commit this crime by telephone, telegraph, mail, computer network, or other form of communication. (PA 14-234, § 2, contains an identical provision.) A similar provision already applies to 2nd degree harassment.

By law, 1st degree harassment is a class D felony (see Table on Penalties).

§ 5 — FRAUDULENT USE OF AN ATM

The act increases, from a class C to a class A misdemeanor, the penalty for fraudulently using an ATM (see Table on Penalties). By law, a person commits this crime when he or she knowingly uses an ATM in a fraudulent way to obtain property, with intent to deprive someone of property or appropriate it to someone.

§ 6 — ISSUING A BAD CHECK

By law, the penalty for knowingly issuing bad checks depends on the value of the checks issued. The act doubles the monetary thresholds for the different penalties, as shown in Table 1. Thus, the act reduces the penalty in some cases.

For example, under prior law, writing a $1,500 bad check was a class D felony but under the act it is a class A misdemeanor.

Table 1: Penalties for Issuing a Bad Check

Penalty	*Amount of Bad Check Issued*	
	Prior Law	*Under the Act*
Class D felony	Over $1,000	Over $2,000
Class A misdemeanor	$500.01 to $1,000	$1,000.01 to $2,000
Class B misdemeanor	$250.01 to $500	$500.01 to $1000
Class C misdemeanor	$250 or less	$500 or less

§ 7 — AR PROGRAM ELIGIBILITY

By law, a person is eligible for AR if he or she is charged with certain crimes and does not have a prior conviction of a crime or certain motor vehicle violations. Prior law allowed a non-veteran to use the AR program once and a veteran to do so twice. The act allows a non-veteran to use the program a second time if (1) the first time was for a crime or motor vehicle violation punishable by up to one year in prison and (2) it is at least 10 years since the court dismissed the charges after the person successfully completed the program.

By law, a person is ineligible for AR if he or she is charged with any of a number of crimes, including any class A felony, most class B felonies, and class C felonies unless good cause is shown. Prior law allowed someone charged with the class B felony of 1st degree larceny to participate but prohibited participation if the person used, attempted to use, or threatened to use force as part of the crime. The act additionally prohibits participation if a person is a state, municipal, or quasi-public official or employee charged with 1st degree larceny involving defrauding a public community of more than $2,000.

By law, the court has discretion to determine whether to allow an eligible defendant to participate and may allow it only if it believes the defendant will probably not offend again.

§§ 9-10 — SEARCH WARRANTS, GPS TRACKING, AND OUT-OF-STATE DATA

Tracking Devices

In 2012, the U.S. Supreme Court ruled that installing a GPS device on a car as part of a criminal investigation is a search under the U.S. Constitution's Fourth Amendment. Thus, in most circumstances, police must obtain a warrant from a judge to do so (*U.S. v. Jones*, 132 S.Ct. 945 (2012)).

The act creates a procedure for a judge to issue a warrant to install a tracking device, defined as an electronic or mechanical device that permits tracking a person's or object's movement. As with warrants for documents and other things, a state's attorney, assistant state's attorney, or two credible persons must apply to a judge or judge trial referee for a warrant for a tracking device. The act requires

the official or persons to have probable cause to believe that (1) a criminal offense has been, is being, or will be committed and (2) using a tracking device will yield evidence of the offense. The complaint requesting the warrant must identify the person or property the device will be attached to and the property's owner, if known.

As with other warrants, the (1) requesting parties must swear an affidavit before the judge that establishes the grounds for the warrant and this document becomes part of the arrest file, (2) judge issues the warrant if he or she finds the grounds for it or probable cause for such grounds exist, and (3) judge directs the warrant to a police or certain other officers.

Under the act, the warrant must (1) identify the person or property to which it will be attached, (2) state its date and time of issuance and grounds or probable cause for issuance, (3) require the officer to install the device within 10 days, and (4) authorize the device's use and data collection for a reasonable period of up to 30 days after installation. (A judge may extend this period for 30 more days on request for good cause.)

Data and Records

The act allows a judge or judge trial referee to issue a warrant for records or data an out-of-state corporation or business entity actually or constructively possesses if the entity does business in Connecticut. (This includes entities that provide email or remote computing services to the public.) The act allows serving the warrant on the entity's authorized representative in person or by mail, commercial delivery, fax, or email if there is proof of delivery. If properly served, the act requires the entity to provide the records or data within 14 business days unless the judge or judge trial referee determines a shorter period is necessary or appropriate

For other requests for records or data, the act specifies that existing law regarding warrants to obtain property applies.

Warrant Procedures

With any type of search warrant, the law requires the applicant to file the application and supporting affidavits with the clerk for the geographical area court where the person who may be arrested would be presented. The act requires the law enforcement agency arresting a person in the matter connected to the search warrant to (1) notify the court clerk of the warrant's return on a chief court administrator-prescribed form and (2) file any applicable uniform arrest report or misdemeanor summons.

For warrants to install tracking devices, the act requires returning the warrant with reasonable promptness consistent with due process, after the authorized tracking period ends. It generally requires giving the person who was tracked or owner of the tracked property a copy of the application and affidavits no more than 10 days after use of the tracking device ends.

The act allows a judge or judge trial referee to order affidavits related to a warrant to install a tracking device withheld under the same circumstances as apply to other warrant affidavits (to protect informants, ongoing investigations, or

certain electronic surveillance information). As with other types of warrants, the act:

1. prohibits an order withholding the affidavits from affecting a person's right to obtain them later and
2. does not limit disclosure to an attorney for a person arrested in connection with the warrant unless the court, on a prosecutor's motion within two weeks of arraignment, finds the state's interest in nondisclosure substantially outweighs the defendant's right to disclosure.

The law limits orders withholding the affidavits to two weeks, unless the prosecutor seeks an extension. The act allows an order related to a tracking device warrant to last until two weeks after any extended period authorized by a judge to use the device and collect data.

§ 11 — EYEWITNESS IDENTIFICATION TASK FORCE EXTENSION

The act allows this task force to continue until June 30, 2016 to (1) collect statistics about eyewitness identification procedures conducted by law enforcement agencies, (2) collect and assist in archiving eyewitness identification procedures used by law enforcement agencies in Connecticut, and (3) consider best practices adopted by agencies in other states. The act prohibits task force members and advisors from receiving any compensation for their services.

The law previously charged this task force with studying issues concerning eyewitness identification in criminal investigations.

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